

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ANDREW CORZO, SIA HENRY, ALEXANDER LEO-GUERRA, MICHAEL MAERLENDER, BRANDON PIYEVSKY, BENJAMIN SHUMATE, BRITTANY TATIANA WEAVER, and CAMERON WILLIAMS, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

BROWN UNIVERSITY, CALIFORNIA INSTITUTE OF TECHNOLOGY, UNIVERSITY OF CHICAGO, THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, CORNELL UNIVERSITY, TRUSTEES OF DARTMOUTH COLLEGE, DUKE UNIVERSITY, EMORY UNIVERSITY, GEORGETOWN UNIVERSITY, THE JOHNS HOPKINS UNIVERSITY, MASSACHUSETTS INSTITUTE OF TECHNOLOGY, NORTHWESTERN UNIVERSITY, UNIVERSITY OF NOTRE DAME DU LAC, THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA, WILLIAM MARSH RICE UNIVERSITY, VANDERBILT UNIVERSITY, and YALE UNIVERSITY,

Defendants.

Case No.: 1:22-cv-00125

Hon. Matthew F. Kennelly

**CERTAIN DEFENDANTS’
MOTION FOR ENTRY OF
ORDER REGARDING THE
HEA STATUTE AND
PRODUCTION OF CERTAIN
FAFSA INFORMATION**

**CERTAIN DEFENDANTS’ MOTION FOR ENTRY OF ORDER REGARDING THE
HEA STATUTE AND PRODUCTION OF CERTAIN FAFSA INFORMATION**

Defendants, with the exception of Cornell University, submit the attached proposed order (“Exhibit A”) regarding the production of certain data that is derived from or related to the U.S. Department of Education’s Free Application for Federal Student Aid (“FAFSA”) and whose use is governed by the Higher Education Act of 1965 (“HEA”). Cornell does not join in this motion and has informed the parties that it intends to separately file a statement setting forth its position.

The moving Defendants have conferred with Plaintiffs, who agreed to the provisions in the proposed Order regarding the collection, anonymizing, and production of FAFSA information being authorized under the HEA, but refused to join this motion without the Order also imposing requirements related to how FAFSA information may be designated and used under the Confidentiality Order (Docket No. 254). Moving Defendants respectfully request that the Court enter this Order as soon as possible to facilitate their ability to collect, anonymize, and produce structured financial aid data that contains FAFSA information.

Plaintiffs have requested certain FAFSA-derived or -related information (including certain information from the Institutional Student Information Record (“ISIR”) that schools receive from the Department of Education based on the FAFSA). The moving Defendants also expect that the parties may seek similar information from non-party colleges or universities. The HEA statute, in relevant part, governs the use of FAFSA information including the privacy of information that institutions of higher education receive through FAFSA/ISIR. According to the HEA statute, data collected by FAFSA “shall be used only for the application, award, and *administration of aid* awarded under this subchapter, State aid, or aid awarded by eligible institutions or such entities as the Secretary may designate.” 20 U.S.C. § 1090 (emphasis added); *see also* Priv. Tech. Assistance Ctr., *Guidance on the Use of Financial Aid Information for Program Evaluation and Research*, U.S. Dep’t of Educ., PTAC-FAQ-9 (Jan. 2017) (“*Guidance*”), available at https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FSA_final_0.pdf.

The moving Defendants are unaware of any court rulings interpreting the above-quoted language concerning whether disclosure of FAFSA information in response to discovery requests (or a court order) can be deemed use “for the application, award, and administration of aid” in the context of a lawsuit brought by students based on alleged conduct pertaining to the calculation of

“aid awarded.” Accordingly, out of an abundance of caution, movants seek an order authorizing Defendants and non-party colleges and universities to produce information that is governed by the HEA.

Given the requirements of the HEA statute, the moving Defendants respectfully request that this Court enter the attached proposed order that (i) authorizes disclosure of information derived from or related to the FAFSA/ISIR, pursuant to the protections of the Order Regarding FERPA and the Production of Certain Documents and Information (“FERPA Order,” Docket No. 231) and the Confidentiality Order (Docket No. 254) entered in this case, and (ii) finds that such collection, production, and use in this litigation is part of the “administration of aid” in each Defendant’s and non-party college’s and university’s financial aid program. Because the efficient and effective administration of financial aid programs is the subject of this action, this interpretation of the HEA statute is consistent with the Department of Education’s interpretation of “administration of aid,” as used in the HEA statute, to include “audits and program evaluations necessary for the efficient and effective administration of those student aid programs.” *Guidance*, *supra*, at 6.¹

Further, this Order is consistent with guidance provided by the Department of Education at a 2019 Federal Student Aid Training Conference for Financial Aid Professionals, which is attached here as Exhibit B. Slides 37 to 39 provide that an institution may produce “a student’s FAFSA data in response to a lawfully issued subpoena . . . if the purpose in obtaining the information is related to the application, award, or administration of aid.” As noted, the litigation here relates to the application, award, or administration of financial aid.

¹ An agency’s guidance is entitled to certain deference. *See Kisor v. Wilkie*, 139 S. Ct. 2400, 2408 (2019) (affirming and explaining *Auer v. Robbins*, 519 U.S. 452, 453 (1997)).

All productions of FAFSA/ISIR-derived or -related information in this action shall be de-identified and designated Confidential Information in compliance with the FERPA Order and the Confidentiality Order.

Accordingly, the moving Defendants respectfully request that the Court enter this proposed Order.

Dated: February 2, 2023

Respectfully submitted,

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